IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Bail Appl..No. 4716 of 2007()

CRMP.7495/2007 of DISTRICT COURT, THODUPUZHA
[CRIME NO.222 OF 2006 OF MUNNAR POLICE STATION, IDUKKI DISTRICT]

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PETITIONER/ACCUSED:

PRABHAKARAN, S/O. PONNUPILLAI,
AGED 35, HOUSE NO.20/641, 8TH MURI LAYAM,
WEST DIVISION, NEYMAKKADU ESTATE, MUNNAR.

BY ADV. SRI.TITUS MANI
SRI.S.SURAJ (PALATHANATHU)

RESPONDENTS: COMPLAINANT & STATE:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE S.I. OF POLICE,
MUNNAR, IDUKKI DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/08/2007 ALONG WITH BA NO.4718/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.Nos.4716 & 4718 of 2007

Dated this the 3rd day of August 2007

O R D E R

Applications for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act in two crimes, both registered under Section 55 of the Kerala Abkari Act. The crux of the allegations is that contraband liquor seized from the possession of some other accused on two different occasions were both supplied by the petitioner. Investigation is complete. Final report has already been filed. Petitioner apprehends that the learned Magistrate may direct arrest of the petitioner. According to the petitioner, he is absolutely innocent. He had no knowledge of the proceedings initiated against him. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The learned counsel for the petitioner submits that the learned Magistrate is obliged to consider such application for bail in the light of the decisions

in Sukumari v. State of Kerala [2001(1)KLT 22]). It is prayed that appropriate directions may be issued under Section 438 Cr.P.C in favour of the petitioner.

2. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

4. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general

directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself, in the light of the decisions referred above.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007